IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.862 OF 2004

Abdul Hameed Yusuf Miyaji & Anr. ... Appellants.

V/s.

Municipal Corporation of Gr.Bombay & Anr. ... Respondents.

Mr. P.K.Samdhani with P.M.Shah,advocate for Appellants.

Mr. J. Xavier for Respondent No.1.

Mr. Navin Parekh with Shri Bipin Joshi for Respondent No.2.

Coram: Smt.Nishita Mhatre, J.
Dated: 18th October, 2004.

P.C. :

1. This A.O. has been filed against the Order of the Trial Court dismissing the Notice of Motion. The Trial Court was not impressed with the submissions made on behalf of the plaintiff that M/s. Alliance Enterprises, the developer of CTS 223 & 223/1 to 5 and 220/4 was not a necessary or proper party. The Trial Court was of the view that non joinder of Alliance Enterprises as a party was fatal to the suit. It has been observed that the plaintiff is a member of the Society which had filed L.C.Suit No. 5480/2003. The application made by the Society for an injunction against the Respondent No.2 from carrying out construction activity on the suit property has been refused. According to the Trial Court the plaintiffs are seeking the same reliefs which were refused in the Suit filed by the Society. The Trial

Court has further come to the conclusion that the Agreement dated 8/8/1989 and power of attorney dated 9/8/1989 when read together and not in isolation indicate that the ownership of the suit property bearing CTS No. 220/4 was conveyed to M/s Alliance Enterprises which in turn had granted ingress and egress to Respondent No.2 under a document dated 17/10/1996. The Trial Court has also held that since the appellants were not entitled to the ownership of the CTS No. 220/4, they were not entitled to the injunction as sought for.

2. Having heard the learned counsel for the parties, I am not convinced that the order of the Trial Court is correct. An arguable case has been made out on behalf of the appellant. However, since the construction has already been erected on the disputed plot of land bearing CTS No.220/4, there shall be status quo in the matter pending hearing of the suit. Suit is expedited. The Trial Court should endeavour to complete hearing and disposal of the suit by 30th June, 2005. A.O. disposed of accordingly.

. Office to issue authenticated copy of the order.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1170 OF 2004

IN

APPEAL FROM ORDER NO.862 OF 2004

Abdul Hameed Yusuf Miyaji & Anr. ... Applicants.

V/s.

Municipal Corporation of Gr.Bombay

& Anr. ... Respondents.

Mr. P.K.Samdhani with P.M.Shah,advocate for Applicants.

Mr. J. Xavier for Respondent No.1.

Mr. Navin Parekh with Shri Bipin Joshi for Respondent No.2.

Coram: Smt.Nishita Mhatre, J.

Dated: 18th October, 2004.

P.C. :

. In view of the disposal of the A.O., the Civil Application does not survive. Hence disposed of.

. Office to issue Authenticated copy of the order.